

**REMARKS**

The Office Action mailed July 6, 2007, has been received and reviewed. Claims 1 through 19, 21, and 23 through 41 are currently pending in the application. Claims 1 through 19, 21, and 23 through 41 stand rejected. Applicants have amended claims 1, 13, 19, 29, 30, 31, 32, 33, 34, and 35, and respectfully request reconsideration of the application in view of the remarks and amendments presented herein.

**35 U.S.C. § 101 Rejection**

Claims 29 through 35 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 29 through 35 have been amended herein to clarify that “a computer-readable medium encoded with computer executable instructions that when executed by a processor cause the processor to perform instructions for creating a dynamic connection and employing an opportunistic data transfer between a first communication node and a second communication node” is being claimed.

Support for the amendment to claim 29 may be found in the specification, among other places, at page 7, lines 7-9 and 20-22 which state:

Embodiments within the scope of the present invention also include computer-readable media for carrying or having a computer-executable instructions or data structures stored thereon. . . . Computer-executable instructions comprise, for example, instructions and data which cause a general purpose computer, special purpose computer, or special purpose processing device to perform a certain function or group of functions.

As a computer-readable medium encoded with a data structure that defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized is statutory subject matter, *In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994); M.P.E.P § 2106.01 (I), it is respectfully requested that the rejection of claims 29 through 35 under 35 U.S.C. § 101 be withdrawn.

**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent Application Publication No. 2007/0055762 A1 to Bachner, III et al. in View of U.S. Patent Application Publication No. 2004/0179511 A1 to Kizu et al.

Claims 1 through 19, 21, and 23 through 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bachner, III et al. (U.S. Patent Application Publication No. 2007/0055762 A1) in view of Kizu et al. (U.S. Patent Application Publication No. 2004/0179511 A1). Applicants respectfully traverse this rejection, as hereinafter set forth.

As a preliminary matter, Applicants note that both the Bachner and the Kizu references were filed and published more than a year after the filing date of the present invention (2/1/2001) and therefore do not qualify as prior art under 35 U.S.C. § 102. However, as both the Bachner and Kizu are continuation applications based on applications that would qualify as prior art under 35 U.S.C. § 102, Applicants have addressed the current rejections on the merits.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S. Ct. at 1742; *DyStar*, 464 F.3d at 1367.

As a preliminary matter, Applicants have amended independent claim 1 as follows:

... after the replicating, retaining the first data elements and the second data elements at each of the first and second communication nodes until the first and second data elements are received by an intended archival system and a command

is received from the intended archival system to delete or modify the replicated data elements from the network.

Support for these amendments may be found in the specification, among other places, at page 13, lines 8-10 and 11-18, which state in part:

All communication nodes of the dynamic LAN retain copies of the data until at least on copy of the data reaches the intended location. . . . Only a master archival system manipulates and/or causes data to be deleted. Therefore, data is only removed from the system when the master archival system receives and confirms that the data is secure at the master archival system and issues a delete command to remove all copies of the secure data from the dynamically mobile data communication system. Each communication node of the system deletes the secured data upon receipt of a delete command, which is distributed throughout the communication nodes of the system through the use of ODTP and was originated by the master system . . . .

Applicants respectfully assert that claim 1 could not have been obvious to a person of ordinary skill in the art at the time the invention was made considering Bachner in view of Kizu because Bachner and Kizu, when combined, do not teach or suggest “retaining the first data elements and the second data elements at each of the first and second communication nodes until the first and second data elements are received by an intended archival system and a command is received from the intended archival system to delete or modify the replicated data elements from the network,” as recited in currently amended independent claim 1. Furthermore, there is no reason that would have prompted a person of ordinary skill in the relevant field to combine the references in the manner suggested.

Bachner teaches a wireless intelligent personal server (WIPS) 30 that receives data from an enterprise system 12, via wireless networks 20 and 22, and updates its memory such that the data will be available on the WIPS 30. *Bachner*, ¶ [0024]. The data on the WIPS 30 may be accessed by display devices 32. *Id.* ¶ [0025], lns. 5-8. In one embodiment, the WIPS 30 connects to a wireless telephone 24 using Bluetooth and causes the wireless telephone 24 to transmit data upstream to the enterprise system 12. *Id.* ¶ [0036], lns. 13-17; ¶ [0046], lns. 1-17.

However, as noted by the Examiner in the Office Action, Bachner does not teach or suggest “retaining the first data elements and the second data elements at each of the first and second communication nodes until a command is received to delete or modify the replicated data elements from the network,” as recited in independent claim 1 prior to the amendments herein.

Furthermore, Applicants respectfully disagree with the Examiner that the teachings of Kizu disclose the retaining element not found in Bachner. Kizu teaches “a communication method and electronic device that enables data synchronization between arbitrary devices without requiring a server.” *Kizu*, ¶ [0007], lns. 2-4. Data synchronization takes place between members A, B, C, D, and E. *Id.* ¶ [0114], lns. 1-3. Sets of data that do not conflict are merged. *Id.* ¶ [0113], lns. 4-5. When there is a conflict between data, the data from the member with the highest priority is used. *See id.* ¶ [0117]. Kizu, however, does not teach or suggest “retaining the first data elements and the second data elements at each of the first and second communication nodes until the first and second data elements are received by an intended archival system and a command is received to delete or modify the replicated data elements from the intended archival system,” as is recited in currently amended independent claim 1. On the contrary, Kizu teaches that the members A, B, C, D, and E delete and modify data when a conflict occurs. In other words, each member performs the deletion and modification of data automatically on its own device in order to be synchronized with the other members.

Applicants can find no description in Kizu of an element that could be considered an intended archival system. Thus, Applicants see no way that Kizu could teach or suggest “a **command is received from the intended archival system to delete or modify** the replicated data elements,” as recited in amended independent claim 1.

The Examiner points out that Kizu discloses deleting or modifying in paragraphs 0084 and 0088. However, these teachings are related to each device managing data on its own device in correlation with the synchronization function. Claim 1, on the other hand, recites “a **command is received** from an intended archival system to delete or modify.” Applicants can find no teachings or suggestion in Bachner or Kizu to **receiving (or transmitting)** commands to delete or modify the replicated data.

As Bachner and Kizu, when combined, do not teach or suggest “retaining the first data elements and the second data elements at each of the first and second communication nodes until the first and second data elements are received by an intended archival system and a command is received to delete or modify the replicated data elements from the intended archival system,” as recited in currently amended independent claim 1, Applicants respectfully assert that independent claim 1 could not have been obvious to a person of ordinary skill in the art at the time the

invention was made considering Bachner in view of Kizu, and request that the Examiner withdraw the rejection of independent claim 1 under 35 U.S.C. § 103(a).

Furthermore, there is no reason that would have prompted a person of ordinary skill in the relevant field to combine the references in the manner suggested by the Examiner. The Examiner has asserted that it would have been obvious to use the features provided by Kizu in order to avoid a data conflict between the WIPS 30 and the wireless phone 24 during the data replication of Bachner. *Outstanding Office Action mailed July 6, 2007*, page 5. Applicants respectfully disagree. As a preliminary matter, Bachner does not teach or suggest that any data is replicated between the wireless telephone 24 and the WIPS 30 or that any data stored at the wireless phone 24 could conflict with data at the WIPS 30. Bachner only teaches that data is transferred between the enterprise system 12 and the WIPS 30 through the wireless phone 24. *Bachner*, ¶ [0046]. In other words, the wireless phone 24 is used exclusively as a communications channel between the WIPS 30 and the enterprise system 12. As no possibility of a data conflict between the WIPS 30 and the wireless phone 24, there is no reason that one would look to the methods of Kizu to avoid a data conflict between the WIPS 30 and the wireless phone 24. Applicants admit that a data conflict could exist between the WIPS 30 and the enterprise system 12. However, Bachner teaches a method of updating data on the WIPS 30 with data from the enterprise system 12, see *Bachner*, ¶ [0036], [0049]. Therefore, there would be no need for a person of ordinary skill in the art to look to the methods of Kizu to resolve a data conflict that Bachner has already resolved.

Regarding claims 2-18, these claims depend from now allowable amended claim 1. Therefore, at least by virtue of their dependency from an allowable claim, claims 2-18 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding independent claim 19, Applicants have amended independent claim 19 as follows:

. . . when the dynamic connection is active, ~~the~~all data elements at any of the two or more of the communication nodes are replicated across the dynamic connection to all of the two or more of the communication nodes.

Support for this amendment may be found in the specification, among other places, at page 17, lines 14-21, which state in part:

As long as privileged communication nodes are included in a dynamic LAN, steps 90-102 are executed to cause each of the privileged communication nodes of the LAN to store a local copy of all data available within the dynamic LAN.

Applicants respectfully assert that the subject matter of independent claim 19 could not have been obvious to a person of ordinary skill in the art at the time the invention was made considering Bachner in view of Kizu because Bachner and Kizu, when combined, do not teach or suggest “when the dynamic connection is active, all data elements at any of the two or more of the communication nodes are replicated across the dynamic connection to all of the two or more of the communication nodes,” as recited in currently amended independent claim 19.

The teaching of Bachner have been discussed above. Bachner does not teach or suggest that “when the dynamic connection is active, all data elements at any of the two or more of the communication nodes are replicated across the dynamic connection to all of the two or more of the communication nodes,” as recited in independent claim 19. On the contrary, Bachner teaches that only certain and not all of the data stored at the WIPS 30 is transferred to the wireless phone 24. In particular, the only data that is transmitted from the WIPS 30 to the wireless phone 24 is “a simple acknowledgement signal” or “digital data that reflects changes to one or more electronic files stored in the memory 106” of the WIPS 30. *Bachner*, ¶ [0046], lns. 5-8. Similarly, only “*particular electronic file[s]*” as needed by the particular applications run on a display device 32 are transferred from the WIPS 30 to the display device 32. *Id.* ¶ [0052], lns. 1-12. Finally, the WIPS 30 only receives and stores the data from the enterprise system 12 intended for it, thus, it does not receive the unintended data. *See id.* ¶¶ [0047]-[0048]. Therefore, there is not a replication of “all data elements” between any of the components of the system taught by Bachner.

The teachings of Kizu do not satisfy the deficiencies. Kizu teaches that data synchronization takes place between members of a data synchronization group. *Kizu*, ¶ [0063], lns. 1-3. Each data synchronization group is configured by each data set. *Id.* ¶ [0077], lns. 1-2. Thus, two members may be in the same data synchronization group for one set of data and not another. In which case, the only data that is transferred between members is the data that is authorized. *See id.* ¶¶ [0125], [0109]. Furthermore, when there is conflicting data between two

members or more members, only the data with the highest priority is synchronized between the two or more members; thus, there is not a replication of “all data elements” between the members of the system taught by Kizu. *See id.* ¶¶ [0113].

As Bachner and Kizu, when combined, do not teach or suggest “when the dynamic connection is active, all data elements at any of the two or more of the communication nodes are replicated across the dynamic connection to all of the two or more of the communication nodes,” as recited in currently amended independent claim 19, Applicants respectfully assert that independent claim 19 could not have been obvious to a person of ordinary skill in the art at the time the invention was made considering Bachner in view of Kizu, and request that the Examiner withdraw the rejection of independent claim 19 under 35 U.S.C. § 103(a).

Regarding claims 21 and 23 through 28, these claims depend from now allowable amended claim 19. Therefore, at least by virtue of their dependency from an allowable claim, claims 21 and 23 through 28 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding independent claim 29, Applicants respectfully assert that this claim could not have been obvious to a person of ordinary skill in the art at the time the invention was made considering Bachner in view of Kizu because Bachner and Kizu, when combined, do not teach or suggest “if the first and second communication nodes are not determined to be privileged for data replication, disconnecting the dynamic network,” as recited in independent claim 29. Applicants note that the Examiner has not pointed to any portion of either of the references that teach or suggest, “if the first and second communication nodes are not determined to be privileged for data replication, disconnecting the dynamic network” and the Applicants cannot locate any such teaching. Applicants note that Buckner teaches that the WIPS 30 only processes data received from the enterprise system 12 if it is intended for the WIPS 30, *Buckner*, ¶ [0048]; however, Buckner does not teach or suggest “disconnecting the dynamic network” “if the first and second communication nodes are not determined to be privileged for data replication.” The teachings of Kizu do not satisfy the deficiencies. Kizu apparently teaches performing a certification step to determine if two members belong to the same data synchronization group and performing data synchronization only if they belong to the same group, *Kizu*, ¶ [0120]. However, Kizu does not

teach or suggest, “disconnecting the dynamic network” “if the first and second communication nodes are not determined to be privileged for data replication.” On the contrary, Kizu suggests that the any connection between two members would remain active if it was determined that they did not belong to the same data synchronization group for a particular set of data because they could belong to the same synchronization group for another set of data. *See* ¶¶ [0077].

As Bachner and Kizu, when combined, do not teach or suggest “if the first and second communication nodes are not determined to be privileged for data replication, disconnecting the dynamic network,” as recited in independent claim 29, Applicants respectfully assert that independent claim 29 could not have been obvious to a person of ordinary skill in the art at the time the invention was made considering Bachner in view of Kizu, and request that the Examiner withdraw the rejection of independent claim 29 under 35 U.S.C. § 103(a).

Regarding claims 30 through 35, these claims depend from allowable amended claim 29. Therefore, at least by virtue of their dependency from an allowable claim, claims 30 through 35 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claim 36, this claim includes the element “if the first and second communication nodes are not determined to be privileged for data replication, disconnecting the dynamic network.” This element is the same as is recited for independent claim 29. Therefore, the analysis presented above with respect to claim 29 is equally applicable to claim 36. As a result, Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of claim 36 be withdrawn.

Regarding claims 37 through 41, these claims depend from allowable amended claim 36. Therefore, at least by virtue of their dependency from an allowable claim, claims 37 through 41 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

**CONCLUSION**

Claims 1-19, 21, and 23-41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

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